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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 NIGEL RAY LACHEY,

7 Plaintiff,

8 v.

9 COMMISSIONER OF SOCIAL SECURITY,

10 Defendant.
11

Case No. 2:20-cv-01438-BNW

ORDER

12 *Pro se* plaintiff Nigel Ray Lachey seeks judicial review of an administrative decision
13 denying his application for Social Security benefits. The Court previously granted Plaintiff's
14 application to proceed *in forma pauperis* but dismissed the complaint with leave to amend. ECF
15 No. 4. On September 3, 2020, Plaintiff timely filed a First Amended Complaint (ECF No. 6),
16 which is now before the Court for screening. For the reasons discussed below, the Court will
17 allow Lachey to proceed with this case.

18 **I. Screening the Complaint**

19 **A. Standard of Review**

20 Complaints filed by any plaintiff proceeding *in forma pauperis* are subject to a mandatory
21 screening by the court. 28 U.S.C. § 1915(e)(2);¹ *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir.
22 2000). In screening the complaint, a court must identify cognizable claims and dismiss claims that
23 are frivolous, malicious, fail to state a claim on which relief may be granted, or seek monetary
24 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
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27 ¹ Although § 1915 largely concerns prisoner litigation, § 1915(e) applies to all *in forma*
28 *pauperis* proceedings. *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of
28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners[.]”).

1 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for
2 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668
3 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient
4 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft*
5 *v. Iqbal*, 556 U.S. 662, 678 (2009). In considering whether the complaint is sufficient to state a
6 claim, all allegations of material fact are taken as true and construed in the light most favorable to
7 the plaintiff. *Wyler Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998)
8 (citation omitted). Although the standard under Rule 12(b)(6) does not require detailed factual
9 allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v.*
10 *Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
11 insufficient. *Id.* Unless it is clear that the complaint’s deficiencies could not be cured through
12 amendment, a plaintiff should be given leave to amend the complaint with notice regarding the
13 complaint’s deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

14 Even following the U.S. Supreme Court’s holdings in *Twombly* and *Iqbal*, the Court has
15 an “obligation . . . where the petitioner is *pro se* . . . to construe the pleadings liberally and to
16 afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
17 2010) (internal quotations and citation omitted). But “the liberal pleading standard . . . applies
18 only to a plaintiff’s factual allegations.” *Neitzke v. Williams*, 490 U.S. 319, 330 n.9 (1989); *see*
19 *also Bruns v. Nat’l Credit Union Admin.*, 12 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v.*
20 *Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)) (noting that a liberal construction may not
21 be used to supply an essential element of the claim absent from the complaint).

22 In the context of social security appeals, if a plaintiff’s complaint challenges a decision by
23 the Social Security Administration, the plaintiff must exhaust administrative remedies before
24 filing a lawsuit. *See* 42 U.S.C. § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833
25 (9th Cir. 1989) (per curiam) (“Section 405(g) provides that a civil action may be brought only
26 after (1) the claimant has been party to a hearing held by the Secretary, and (2) the Secretary has
27 made a final decision on the claim”). Generally, if the SSA denies a claimant’s application for
28 disability benefits, the claimant may request reconsideration of the decision. If the claim is denied

1 at the reconsideration level, a claimant may request a hearing before an administrative law judge
2 (“ALJ”). If the ALJ denies the claim, a claimant may request review of the decision by the
3 Appeals Council. If the Appeals Council declines to review the ALJ’s decision, a claimant may
4 then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

5 Once a plaintiff has exhausted administrative remedies, he may obtain judicial review of a
6 SSA decision denying benefits by filing suit within 60 days after notice of a final decision. *Id.*
7 An action for judicial review of a determination by the SSA must be brought “in the district court
8 of the United States for the judicial district in which the plaintiff resides.” *Id.* The complaint
9 should state the nature of plaintiff’s disability, when plaintiff claims he became disabled, and
10 when and how he exhausted his administrative remedies. The complaint should also contain a
11 plain, short, and concise statement identifying the nature of plaintiff’s disagreement with the
12 determination made by the SSA and show that plaintiff is entitled to relief.

13 A district court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted
14 his administrative remedies and timely filed a civil action. However, judicial review of the
15 Commissioner’s decision to deny benefits is limited to determining: (a) whether there is
16 substantial evidence in the record as a whole to support the findings of the Commissioner, and (b)
17 whether the correct legal standards were applied. *Morgan v. Commissioner of the Social Security*
18 *Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

19 **B. Analysis**

20 Here, Lachey alleges in his amended complaint that the Administrative Law Judge
21 (“ALJ”) denied his application for supplemental security income on December 20, 2019. ECF
22 No. 6 at 10. He further alleges that on June 11, 2020, the Appeals Council denied review of the
23 ALJ’s decision. *Id.* at 6. Plaintiff then filed this action on August 4, 2020. Thus, liberally
24 construing Plaintiff’s amended complaint, it appears that he exhausted the administrative
25 remedies and timely commenced this action.

26 Additionally, the amended complaint indicates the nature of Lachey’s disability and its
27 alleged onset date. *Id.* at 2. It also indicates that Plaintiff resides within the District of Nevada. *Id.*
28 at 1.


1 Finally, the amended complaint includes sufficient facts to state a claim for relief, alleging
2 that the ALJ's findings that Plaintiff's medical impairments "did not meet the criteria of one
3 extreme or two marked limitations" were "not supported by substantial evidence in the record."
4 *Id.* at 2–3. Accordingly, Lachey may proceed with his claims.

5 1. IT IS THEREFORE ORDERED that the Clerk of Court must serve the
6 Commissioner of the Social Security Administration by sending a copy of the First Amended
7 Complaint (ECF No. 6) and an accompanying summons by certified mail to: (1) Office of the
8 Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear St., Suite 800,
9 San Francisco, California 94105-1545; and (2) the Attorney General of the United States,
10 Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

11 2. IT IS FURTHER ORDERED that the Clerk of Court must issue summons
12 to the United States Attorney for the District of Nevada and deliver the summons and First
13 Amended Complaint to the U.S. Marshal for service.

14 3. IT IS FURTHER ORDERED that from this point forward, Plaintiff must
15 serve on Defendant or, if appearance has been entered by an attorney, on the attorney, a copy of
16 every pleading, motion, or other document submitted for consideration by the Court. Plaintiff
17 must include with the original paper submitted for filing a certificate stating the date that a true
18 and correct copy of the document was personally served or sent by mail to the Defendant or
19 counsel for the Defendant. The Court may disregard any paper received by a district judge or
20 magistrate judge that has not been filed with the Clerk, and any paper received by a district judge,
21 magistrate judge, or the Clerk that fails to include a certificate of service.

22 DATED: September 14, 2020

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24 BRENDA WEKSLER
25 UNITED STATES MAGISTRATE JUDGE
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